

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
BOBBY NUNN,

Plaintiff,

-against-

NFL ENTERPRISES, LLC and
NBCUNIVERSAL MEDIA, LLC,

Defendants.
-----X

No. 22-CV-5977 (ALC)

**DEFENDANT NBCUNIVERSAL
MEDIA, LLC'S ANSWER TO
PLAINTIFF'S COMPLAINT**

Defendant NBCUniversal Media, LLC ("NBC"), for itself and no other defendant, answers the allegations in the numbered paragraphs of the Complaint of Plaintiff Bobby Nunn ("Nunn"), filed on July 13, 2022 (Dkt. 1) as follows. NBC denies all allegations in Nunn's Complaint not specifically admitted herein.

INTRODUCTION

NBC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the un-numbered paragraph under "Introduction," and on that basis denies said allegations. NBC specifically denies any infringement.

PARTIES

1. NBC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1, and on that basis denies said allegations.

2. NBC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2, and on that basis denies said allegations.

3. NBC denies the allegations contained in Paragraph 3, except it admits it is doing business in the State of New York and that its principal place of business is located at 30 Rockefeller Plaza, New York, New York 10112.

4. Paragraph 4 contains legal conclusions to which no response is required. To the extent a response is required, NBC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4, and on that basis denies said allegations.

JURISDICTION AND VENUE

5. Paragraph 5 contains legal conclusions to which no response is required. To the extent a response is required, NBC lacks knowledge or information sufficient to form a belief as to the truth of the allegations relating to any defendant other than NBC, and on that basis denies said allegations. NBC further denies the remainder of the factual allegations as written, but states that it does not challenge personal jurisdiction or venue in this action.

6. Paragraph 6 contains legal conclusions to which no response is required. To the extent a response is required, NBC denies that Nunn has a valid claim arising under the Copyright Act.

7. Paragraph 7 contains legal conclusions to which no response is required. To the extent a response is required, NBC denies any factual allegations as written, but does not challenge subject matter jurisdiction in this action.

GENERAL FACTUAL ALLEGATIONS

8. NBC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8, and on that basis denies said allegations.

9. NBC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 9, and on that basis denies said allegations.

10. NBC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 10, and on that basis denies said allegations.

11. NBC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11, and on that basis denies said allegations.

12. NBC denies the allegations contained in Paragraph 12 insofar as they relate to NBC. NBC lacks knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations contained in Paragraph 12, and on that basis denies said allegations.

13. NBC denies the allegations contained in Paragraph 13.

14. NBC denies the allegations contained in Paragraph 14 insofar as they relate to NBC, except NBC admits that it performed a portion of the Subject Work pursuant to a valid license during broadcasts of NFL football games on October 28, 2018 and January 2, 2022. NBC lacks knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations contained in Paragraph 14, and on that basis denies said allegations.

15. Paragraph 15 contains no factual allegations to which NBC can respond. Insofar as there are any factual allegations made in Paragraph 15, NBC denies said allegations, and NBC specifically denies any infringement.

16. NBC denies the allegations contained in Paragraph 16 insofar as they relate to NBC, and states that its use of the Subject Work was pursuant to a valid license. NBC lacks knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations contained in Paragraph 16, and on that basis denies said allegations.

17. NBC denies the allegations contained in Paragraph 17, except it admits that Nunn contacted NBC on or about January 27, 2022 via email, which correspondence speaks for itself, and that NBC has denied and continues to deny any infringement. NBC further states that it

lacks knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations contained in Paragraph 17, and on that basis denies said allegations.

FIRST CLAIM FOR RELIEF

18. In response to Paragraph 18, NBC repeats, re-alleges, and incorporates herein by reference as though fully set forth, its responses to the allegations contained in the preceding paragraphs of the Complaint.

19. NBC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 19, and on that basis denies said allegations. NBC specifically denies any infringement.

20. Paragraph 20 contains legal conclusion to which no response is required. To the extent a response is required, NBC denies the allegations contained in Paragraph 20. NBC specifically denies any violation of Plaintiff's rights.

21. NBC denies the allegations contained in Paragraph 21 insofar as they relate to NBC. NBC lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 21, and on that basis denies said allegations.

22. NBC denies the allegations contained in Paragraph 22 insofar as they relate to NBC. NBC lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 22, and on that basis denies said allegations. NBC specifically denies any violation of Plaintiff's rights.

23. NBC denies the allegations contained in Paragraph 23 insofar as they relate to NBC. NBC lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 23, and on that basis denies said allegations. NBC specifically denies any wrongful conduct or that Nunn has been damaged or harmed.

24. NBC denies the allegations contained in Paragraph 24 insofar as they relate to NBC, except to admit that NBC had access to the Subject Work through a third-party service. NBC lacks knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations contained in Paragraph 24, and on that basis denies said allegations. NBC specifically denies any unauthorized copying.

25. NBC denies the allegations contained in Paragraph 25 insofar as they relate to NBC, except NBC admits that it performed a portion of the Subject Work pursuant to a valid license during broadcasts of NFL football games on October 28, 2018 and January 2, 2022. NBC lacks knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations contained in Paragraph 25, and on that basis denies said allegations.

26. NBC denies the allegations contained in Paragraph 26.

27. NBC denies the allegations contained in Paragraph 27.

28. NBC denies the allegations contained in Paragraph 28.

29. Paragraph 29 contains legal conclusions to which no response is required. To the extent a response is required, NBC denies the allegations contained in Paragraph 29.

30. Paragraph 30 contains legal conclusions to which no response is required. To the extent a response is required, NBC denies the allegations contained in Paragraph 30.

31. Paragraph 31 contains legal conclusions to which no response is required. To the extent a response is required, NBC denies the allegations contained in Paragraph 31.

NBC'S AFFIRMATIVE DEFENSES

First Affirmative Defense **(Failure to State a Claim)**

32. Nunn's Complaint fails to state a cause of action upon which relief may be granted.

Second Affirmative Defense
(License)

1. Nunn's claim is barred, in whole or in part, because the allegedly unauthorized use of the Subject Work was licensed.

Third Affirmative Defense
(Statute of Limitations)

2. Nunn's claim is barred, in whole or in part, by the applicable statute of limitations, 17 U.S.C. § 507.

Fourth Affirmative Defense
(Ephemeral Use)

3. Nunn's claim is barred, in whole in or in part, because any reproduction of the Subject Work constituted an ephemeral recording as provided in 17 U.S.C. § 112.

Fifth Affirmative Defense
(Fair Use)

4. Nunn's claim is barred, in whole or in part, because any use of the Subject Work constituted fair use as provided in 17 U.S.C. § 107.

Sixth Affirmative Defense
(Reservation of Remaining Defenses)

5. NBC reserves all affirmative defenses under Rule 8(c) of the Federal Rules of Civil Procedure, the Copyright Laws of the United States, and any other defenses, at law or in equity, that may now exist or in the future be available based on discovery and further factual investigation in this case.

PRAYER FOR RELIEF

WHEREFORE, NBC prays that judgment be entered against Nunn as follows:

- a. That Nunn's Complaint, and all claims asserted therein, be dismissed with prejudice;
- b. That Nunn take nothing by way of his Complaint;
- c. That NBC be awarded its attorney's fees and full costs pursuant to 17 U.S.C. § 505; and
- d. That the Court grant NBC such other and further relief and the Court may deem just and proper.

Dated: New York, New York
February 6, 2023

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